

1  
2  
3  
4  
5 **UNITED STATES DISTRICT COURT**  
6 **FOR THE NORTHERN DISTRICT OF ILLINOIS**  
7 **EASTERN DIVISION**

8 **BIDI VAPOR, LLC,**

9 **Plaintiff,**

10 **v.**

11 **VAPERZ LLC, OEM PARTNERS, LLC and**  
12 **VAPERZ ENTERPRISE LLC,**

13 **Defendants.**  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CASE NO.: 21-cv-01430**

**DECLARATION OF NIRAJ PATEL IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

## DECLARATION OF NIRAJ PATEL

I, Niraj Patel, of full age, hereby declare as follows:

1. My name is Niraj Patel. I am Founder and Chief Executive Officer of BIDI Vapor, LLC Inc. (“BIDI”) and have personal knowledge as to the facts underlying BIDI’s allegations against Defendants. I submit this declaration in support of BIDI’s’ application for an Order to Show Cause for a Preliminary Injunction.

2. BIDI is a leading developer and marketer of premium, eco-friendly, innovative electronic cigarette and vaping products. (“BIDI Products”).

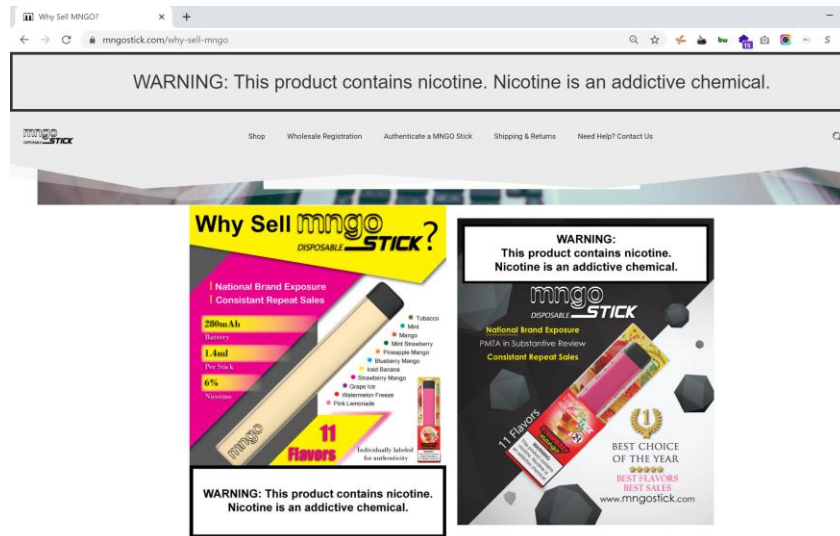
3. BIDI Products are one of the world’s leading lines of electronic cigarettes and BIDI has emerged as a leading player in the disposable electronic cigarettes industry having captured a 27.9% U.S. market share in the fourth quarter calendar of 2020.

4. BIDI’s most successful and innovative product is called the BIDI Stick, a revolutionary pre-filled, e-liquid tank equipped with a fully charged battery and six percent (6%) Class A nicotine for adult smokers (hereinafter “BIDI Stick”). With a high-quality aluminum frame and eleven (11) flavors the Bidi Stick delivers consistent flavor and a satisfying vaping experience. Bidi uses only the highest quality materials and processes in making the BIDI Stick to meet or exceed U.S. requirements and standards.

5. We recently discovered a number of competing business entities selling vaping products similar to the BIDI Stick that we believed falsely claimed to contain six percent (6%) nicotine.

6. One such competitive product is called the MNGO Stick. The packaging for the MNGO Stick and the mngostick.com website indicate that the MNGO Stick contains six percent (6%) nicotine.





7. BIDI retained the services of Labstat International, Inc (“Labstat”), a globally recognized analytical laboratory dedicated to research, testing and analysis of nicotine containing products in general for regulatory reporting and labeling, to evaluate through analytical testing whether the MNGO Stick indeed contained e-liquid comprised of six percent (6%) nicotine.

8. The specific MNGO Stick vaping products evaluated by Labstat are the following: (1) MNGO Blueberry Mango 6%; (2) MNGO Iced Banana 6%; and (3) MNGO Strawberry Mango 6%; all sold by Defendants.

9. On or about February 11, 2021, BIDI received a copy of the Labstat test results which confirmed that the MNGO Stick contains significantly less than the advertised six percent (6%) nicotine (“Labstat Report”). A copy of the Labstat Report accompanies this declaration as **Exhibit A**.

10. As can be seen from the Labstat Report, all of the evaluated MNGO Stick vaping products purporting to contain six percent (6%) nicotine contain less than four percent (4%) nicotine. Specifically, the MNGO Stick vaping products, as shown in the Labstat chart below taken from the Labstat Report, demonstrated an average nicotine level between 3.06% to 3.43%.

Matrix	Sample	Nicotine			
Code	ID	[mg/g]			
		Average	St Dev	L. Limit (95%)	U. Limit (95%)
EL	1806548	33.8	0.3	33.1	34.6
EL	1806549	33.4	0.3	32.5	34.2
EL	1806550	34.3	0.3	33.6	35.0

EL	1806552	32.7	0.5	31.3	34.0
EL	1806553	30.7	0.5	29.5	31.9
EL	1806554	30.6	1.7	26.3	34.9
EL	1806556	31.6	0.2	31.1	32.1
EL	1806557	31.4	0.1	31.1	31.7
EL	1806558	31.6	0.1	31.3	31.9

11. MNGO Stick is a direct competitor to BIDI's BIDI Stick in many ways. First, with regard to the products itself: (1) nicotine level (marketed as containing 6% nicotine; (2) amount of e-liquid (both 1.4ml) and the number and variety of flavors (both have 11 flavors).

12. Prior to the release of the MNGO Stick in 2020, the BIDI Stick was the only disposable vape product on the market that offered a nicotine level of 6%, 1.4ml of e-liquid and 11 flavors.

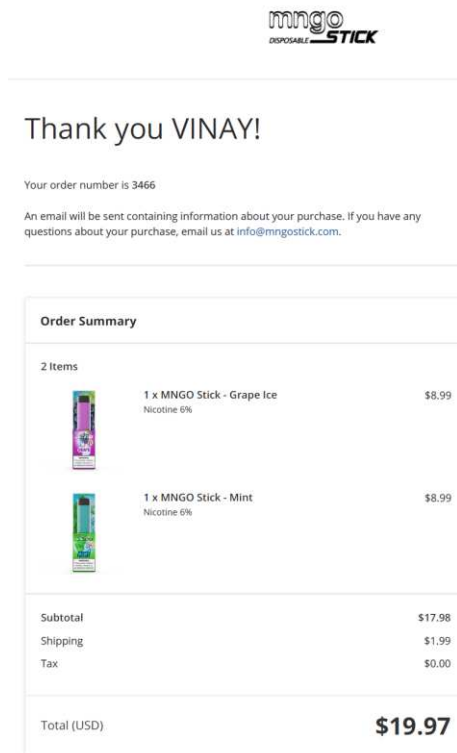
13. MNGO Stick is also a direct competitor to BIDI's BIDI Stick in the marketplace as the BIDI Stick and MNGO Stick are sold: (1) by many of the same on-line and brick and mortar retailers side by side, including (as shown below) at Circle K convenience stores, with nearly 7,200 stores in North America; and (2) through many of the same wholesalers such as H.T. Hackney, which according to its own website (<https://www.hthackney.com>) is "one of the largest wholesale distributors in the United States".

CIRCLE K (Retail Convenience Store)



14. The MNGO Stick is being sold to consumers for as low as \$8.99 while BIDI Stick is generally sold for \$12.99 to \$15.99.

15. On March 8, 2021, a BIDI Vapor, LLC employee, at my direction, purchased two (2) MNGO Stick products from the mngostick.com website for \$8.99 each (as shown below).



16. When sold side by side, consumers will select MNGO Stick since it is falsely marketed as a near identical product to the BIDI Stick, as containing the same level of nicotine, 1.4ml of e-liquid and similar number and variety of flavors as the BIDI Stick but, most significantly, priced substantially less (in some instances, the MNGO Stick is sold to consumers at an approximate 43.7% discount to the BIDI Stick) than BIDI Stick.



1           17.     Additionally, given the significant disparity in retail pricing, it is likely that the wholesale  
2 price for the MNGO Stick is also significantly less than the BIDI Stick which is sold for \$6.75.

3           18.     Given the price disparity for an alleged similar six percent (6%) nicotine device,  
4 wholesalers and retailers are choosing to carry MNGO Stick over BIDI Stick.

5           I declare under penalty of perjury under the laws of the United States that the foregoing is true  
6 and correct. Executed this 6 day of April 2021 at Melbourne, Florida.

7  
8 

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

Niraj Patel